Lin Mei Li v Arab-Malaysian Bank Bhd

HIGH COURT (KOTA BHARU) — CIVIL APPEAL NO MT(1)12–25 OF 2000
MUHAMMAD KAMIL J
14 DECEMBER 2000

Banking *— Banks and banking business — Current account — Cheques drawn signed by appellant's husband unaccepted as contrary to normal banking practice — Closure of account — Notice of closure served by AR Register — Whether amount to good notice — Effective date of closure, 14 days from date of notice — Whether amount to adequate notice — Rules of Current Account cl 3*

The appellant had two current accounts with the respondent bank. The respondent discovered that the appellant's cheques drawn on the respondent were signed by the appellant's husband, which was strictly unacceptable as contrary to normal banking practice. The respondent decided to close both accounts and a notice (exh D2) was despatched to the appellant by AR Register. The effective date of closure of the accounts was 14 days from the date of the notice. The appellant maintained that no notice of the closure of the accounts by the respondent had been served on her. Thus the respondent had contravened cl 3 of the Rules of Current Account. As a result of the breach the appellant claimed for damages for breach of contract, damages for libel for dishonouring the cheques and costs. The sessions court dismissed the appellant's claim for breach but awarded her RM20,000 for cheques dishonoured. The appellant appealed.

Held, dismissing the appeal:

The respondent had rightly closed the appellant's accounts and sent a notice of closure to the appellant. The notice gave a 14 day period in line with local banking practice and it was sufficient in view of the amount involved. The posting of the notice by AR Register was evidence that the notice had been served on the addressee unless there was evidence to the contrary.The respondent had proved that a notice had been served in accordance with cl 3 of the Rules of Current Account. Therefore there was no evidence of breach of agreement by the respondent (see pp 398D, 399A–B).

[Bahasa Malaysia summary

Perayu memegang dua akaun semasa di bank responden. Responden mendapat tahu bahawa cek perayu yang dikeluarkan olehnya telah ditandatangani oleh suami perayu dan ini tidak dapat diterima kerana ia bertentangan dengan amalan urusan bank biasa tersebut. Responden telah membuat keputusan untuk menutup kedua-dua akaun perayu dan telah menghantar notis (eksh D2) melalui AR berdaftar kepada perayu. Tarikh penutupan akaun-akaun tersebut adalah 14 hari dari tarikh notis penutupan akaun tersebut. Perayu menyatakan bahawa beliau tidak menerima notis tersebut. Dengan

itu, responden telah melanggar kl 3 Kaedah-Kaedah Akaun Semasa dan oleh kerana kemungkiran tersebut, perayu telah menuntut ganti rugi bagi kemungkiran kontrak, ganti rugi untuk libel kerana mengeluarkan cek yang tidak laku dan kos. Mahkamah sesyen telah menolak tuntutan kemungkiran perayu, tetapi telah mengurniakan RM20,000 untuk cek-cek yang tidak laku. Perayu merayu.

Diputuskan, menolak rayuan tersebut:

Responden telah menutup akaun perayu dengan betul dan telahpun menghantar kepada perayu notis penutupan tersebut. Notis itu memberi tempoh masa 14 hari selaras dengan amalan bank-bank tempatan dan memandangkan amaun yang terlibat, ini adalah mencukupi. Penghantaran notis tersebut dengan menggunakan AR berdaftar merupakan bukti bahawa notis tersebut telah dihantar kepada penerima, kecuali terdapat bukti sebaliknya. Responden telah dapat membuktikan bahawa notis itu dihantar menurut kl 3 Kaedah-Kaedah Akaun Semasa. Oleh itu, tiada bukti kemungkiran perjanjian oleh responden (lihat ms 398D, 399A–B).]

Notes

For cases on banks and banking business, see 1 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 1306–1409.

Cases referred to

Joachimson v Swiss Bank Corp (1872) LR 8 Ex 10 (refd)
Prosperity Ltd v Lloyd's Bank Ltd (1923) 39 TLR 372 (refd)

Zainal Abidin bin Mustafa (*Zainal & Mariani*) for the appellant/plaintiff.
Benedict Cheang (*Benedict Cheang Naziruddin & Co*) for the respondent/defendant.

Muhammad Kamil J. : The appellant claimed that the respondent bank had committed a breach of contract when her two accounts with the bank were closed without due notice. As a result of the closure of accounts, some cheques issued by the appellant were dishonoured, and the appellant suffered damages. The appellant claimed for damages for breach of contract, damages for libel and costs. The learned session court judge dismissed the appellant's claim for breach but awarded her RM20,000 for cheques dishonoured. The appellant appealed.

Brief factual background

The appellant had two current accounts with the respondent bank, and these accounts were managed and operated by the appellant's husband. As a matter of fact he signed the appellant's cheques drawn on the bank, which was strictly unacceptable as contrary to normal banking practice. On discovery of this fact, which was admitted by the husband, the bank decided to close both accounts.

The bank closed the appellant's accounts on 22 July 1998 and a notice thereof (exh D2) was despatched to the appellant. The effective date of closure of the accounts was 14 days thereafter, ie by 4 August 1998.

The appellant was a newspaper reporter cum an agent in insurance and properties. In her dealings with other people it seemed that she had, habitually issued post-dated cheques drawn on these two accounts, and had frequently deposited sums of money to meet the post-dated cheques on the due dates.

The appellant had issued 13 such cheques, and on 13 August 1998 the appellant tendered a cheque for RM20,000 and RM8,000 in cash into the accounts, which were refused by the bank as the appellant's accounts had already been closed.

The appellant maintained that no notice of the closure of the accounts by the bank had been served on the appellant. Thus the bank had contravened cl 3 of the Rules of Current Account ('the Rules') (p 114 of the appeal record). As a result of the breach of the Rules the appellant claimed for damages for breach of contract, damages for libel for dishonouring the cheques and costs.

Clause 3 of the Rules provides:

> The bank may at any time, without prior notice to the customer, close the customer's account with immediate effect without assigning any reason therefor, and the bank shall thereafter send a notice of such closure to the customer. Upon such notice of closure being sent to the customer, the bank shall be immediately released from any obligations and shall have the right to refuse payment of any cheque drawn on such account and subsequently presented. The customer agrees to be responsible for any and all consequences resulting or arising therefrom. The customer undertakes in such event to return on demand all unused cheques. After deduction of all charges payable to the bank in connection with the account and the closure thereof, the bank may at its discretion: (i) send to the customer its cheque for the balance standing to the credit of such account; or (ii) transfer any balance in the account to the bank's unclaimed balance account and the customer may collect the balance from the bank during the bank's business hours or the bank may at its discretion remit the balance at the customer's risk to the last known address of the customer.

It is clear that the bank may close a customer's account with immediate effect, and the bank shall thereafter send a notice thereof to the customer. Upon such notice of closure being sent to the customer, the bank shall immediately be released from any further obligations and shall have the right to refuse payment of any cheque drawn on such account.

In *Joachimson v Swiss Bank Corp* (1872) LR 8 Ex 10, where Atkin LJ said (at pp 234–235):

> It is a term of the contract that the bank will not cease to do business with the customer except upon reasonable notice . The customer can at any time close his current account without notice to the banker, but if the banker closes it without giving the customer time to make other arrangements, the subsequent dishonour of the customer's cheques may leave him liable for damage to credit.

In the *Law of Banking in Singapore and Malaysia* by Myint Soe (PBM) at p 241, states:

> According to local practice, most banks give 14 days' notice and as there is no litigation in Singapore and Malaysia on this point, it will appear that this period is generally adequate.

In *Prosperity Ltd v Lloyd's Bank Ltd* (1923) 39 TLR 372, where a written notice was given by the bank to the plaintiff company that it would cease to act as its banker after the expiry of one month. McCardie J said that a banker had the right to close at any time an account which was in credit provided reasonable notice was given and this would vary according to circumstances. In that case, about £7,000 was outstanding to the company's credit and the position of the bank was inconvenienced by the scheme of insurance which had been inverted by the plaintiff company and which scheme or arrangement was known to the banker. The judge held that a month's notice was not adequate. Ultimately, it was agreed between the parties that the bank would act as bankers for the plaintiff for a further limited period.

In the instant case, the respondent had rightly closed the appellant's accounts, and sent a notice of closure to the appellant. The notice gave a 14 day period in line with local banking practice, and it is sufficient in view of the amount involved. The notice (exh D2) was sent by AR Register (exh D4) which was received by the appellant. The agreement, ie cl 3, does not prescribed the format of the notice; D2 is, for convenience, reproduced below:

> 22 July 1998
>
> Lin Mei Li
> Lot 455 Seksyen 19
> Wakaf Siku
> 15050 Kota Bharu Kelantan.
>
> Re: Closure of Account Number
> 008-2-000151-6 AND 008-2-50006-2
>
> We regret to note that the above accounts have been misconducted whereby the cheque issued were signed by a third party. This practice is obviously against the bank's policy.
>
> The stated accounts shall be closed within Fourteen (14) days from the date hereof. Therefore you are requested to return all unused cheques before the due date.
> Thank you.
>
> Your faithfully,
> ARAB-MALAYSIAN BANK
> KOTA BHARU BRANCH
>
> Sgd.
>
> .....
> EN HISHAMUDDIN AB JALIL
> MANAGER

In my view, the letter D2 was sufficient notice which had informed the appellant of the closure of the accounts.

The posting of the notice D2 by AR Register was evidence that the notice had been served on the addressee unless there was evidence to the contrary. In my judgment, the respondent had proved that a notice had been served in accordance with cl 3 of the Rules. Therefore, there was no evidence of breach of the agreement by the respondent. The finding of the lower court was correct, and I would not interfere with it.

The appellant raised ten points in the appeal, which do not disclose any merit worthy of any consideration. In the circumstances, I would dismiss the appeal with costs to be taxed unless agreed.

Appeal dismissed.

Reported by Jafisah Jaafar